

United States Court of Appeals For the First Circuit

No. 16-1847

ANTONIO ORTIZ-APONTE,

Petitioner,

v.

UNITED STATES,

Respondent.

Before

Howard, Chief Judge,
Torruella and Thompson, Circuit Judges.

JUDGMENT

Entered: October 28, 2016

The request for permission to file a second or successive motion pursuant to 28 U.S.C. § 2255 is denied. Johnson v. United States, 135 S. Ct. 2551 (2015), has no bearing on this petitioner's conviction under 18 U.S.C. § 924(c); that conviction was predicated on the petitioner's separate conviction for conspiracy to possess cocaine with intent to distribute, and not on any purported crime of violence. Further, his double jeopardy claim under Puerto Rico v. Sanchez Valle, 136 S. Ct. 1863 (2016), does not provide a basis for filing a second or successive motion pursuant to 28 U.S.C. § 2255. We need not consider whether Sanchez Valle announced a new rule of constitutional law made retroactive to cases on collateral review because, in any event, petitioner's double jeopardy claim under that precedent would fail. The Puerto Rico statute under which he was convicted (Article 5.06 of the Puerto Rico Weapons Law) requires proof of an element -- possession of a firearm without a license -- that the relevant federal statute (18 U.S.C. § 924(c)) does not; and the federal statute, unlike the Puerto Rico statute, requires proof that the firearm was used or carried during and in relation to a drug trafficking crime. See Brown v. Ohio, 432 U.S. 161, 166-67 (1977).

The request for permission to file a second or successive motion pursuant to 28 U.S.C. § 2255 is denied.¹ The motion for leave to supplement the petition is denied.

By the Court:

/s/ Margaret Carter, Clerk

cc:

Antonio Ortiz-Aponte

Mariana E. Bauza Almonte

¹ Th[is] . . . denial of an authorization . . . to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari." See 28 U.S.C. § 2244(b)(3)(E); Lykus v. Corsini, 565 F.3d 1 (1st Cir. 2009); see also 28 U.S.C. § 2255(h).